

APPEAL NO. 041590  
FILED AUGUST 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 4, 2004. The hearing officer determined that the appellant (claimant) was injured in the course and scope of his employment on \_\_\_\_\_; that the injury occurred while the claimant was in a state of intoxication from the introduction of a controlled substance, as defined in Section 401.013, thereby relieving the respondent (carrier) from liability for compensation; and that due to being intoxicated at the time of the injury, the injury is not compensable and the claimant did not have disability. The claimant appeals the intoxication determination and its resulting effect on the compensability and disability determinations. The carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

A claimant has the burden of establishing that a compensable injury was sustained. An insurance carrier is not liable for compensation if an injury occurred while the employee was in a state of intoxication. Section 406.032. Section 401.013(a)(2)(B) defines intoxication as not having normal use of mental or physical faculties resulting from the voluntary introduction into the body of a controlled substance or controlled substance analogue, as defined by Section 481.002, Health and Safety code. The standard for intoxication resulting from the use of marijuana, the controlled substance involved in the present case, is tied to whether a claimant had the normal use of his faculties. Whether the claimant had the normal use of his mental or physical faculties at the time of the injury was a factual question for the hearing officer to resolve. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's intoxication determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Given our affirmance of the intoxication determination, we similarly affirm the determinations that the claimant did not sustain a compensable injury on \_\_\_\_\_, and did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT  
221 WEST 6TH STREET, SUITE 300  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Gary L. Kilgore  
Appeals Judge